

CASE NO. 08 cv 1589

ATTACHMENT NO. 1

EXHIBIT _____

TAB (DESCRIPTION) _____

1 MR. CASSIDY: That wasn't the question asked,
2 though, Judge.

3 THE COURT: Well, I think it was fairly
4 implied in the question that was asked of the
5 witness.

6 MR. CASSIDY: All right.

7 THE COURT: The answer is non-responsive and
8 the objection is sustained.

9 MS. PLACEK: Thank you.

10 Isn't it correct that in this statement
11 it is not contained a time when Mr. Hendricks, in fact,
12 left the garage?

13 A He didn't give me a time, no.

14 Q Thank you. Approximately how long did it
15 take to get this statement?

16 A How long did it take me to write it
17 out? Or how long was the entire conversation?

18 Q In total, the oral conversation, the writing
19 it out and Mr. Hendricks signing it.

20 A I started talking to Mr. Hendricks about
21 ten o'clock that evening. I started writing out the
22 handwritten at approximately ten forty-five. It took
23 about ten to fifteen minutes to go through-- As long
24 as it would take me to read it and make the corrections

1 Mr. Hendricks wanted, so a total of about an hour.

2 Q Am I correct in saying that you wrote
3 this statement?

4 A Yes, I did.

5 Q Am I correct in saying that it's a
6 synopsis of what Mr. Hendricks told you as part of the
7 oral statement?

8 A It's a summary, yes.

9 Q Am I correct in saying that only on two
10 occasions you use quotations as to Mr. Hendricks'
11 exact words?

12 A Yes.

13 Q Am I correct in saying that as a total
14 of those quotations, they total approximately four
15 words, "Freak," and "Look at the body?"

16 A No, the quotation marks are around
17 the words, "Ride her like a horse."

18 Q "Ride her like a horse," and the other one
19 would be "freak," correct?

20 A Correct.

21 Q And what was the other one?

22 A I believe those are the only two.

23 Q So instead of four words the quotations
24 would be, in fact, around six words, correct?

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1 A Yes.

2 Q As Mr. Hendricks' exact words, correct?

3 A Yes.

4 Q Am I correct in saying that you had
5 written-- Or in your opinion the statement was written as
6 accurately as you could?

7 A Yes.

8 Q But am I correct that on the very first
9 page, where the correct spelling of Mr. Hendricks'
10 name appears, you, in fact, misspelled Mr. Hendricks'
11 name?

12 A That's correct. That was a mistake that
13 I had made writing out the statement and which I
14 corrected it. That's why my initials are the only
15 ones that appear.

16 Q Am I correct in saying that, as a matter
17 of fact, as to this statement, the manner and form
18 in which it was taken was, in fact, in pure summary
19 form?

20 A I'm sorry. I don't understand your
21 question.

22 Q Sure. Let me ask you this. Am I
23 correct in assuming that there are numerous mistakes
24 in the statement?

1 A There are numerous corrections that were
2 made, yes.

3 Q Am I correct in saying that even some of
4 the corrections that you said you read over with
5 Mr. Hendricks have yet to be corrected?

6 A The corrections that were made, if I made
7 a mistake during the time that I wrote them out, my
8 initials appear. When Mr. Hendricks wanted to change
9 something, for example on page three he made the
10 corrections, and his initials appear.

11 Q Am I correct in saying that there is
12 still corrections needed in this statement even after
13 the supposed two readings by yourself?

14 A Corrections as to what? Something should
15 be added?

16 Q Well, let me ask you this. How do you
17 spell the word "waist," as in "I grabbed her around the
18 waist?"

19 MR. CASSIDY: Objection, Judge. Argumentative.

20 THE COURT: No.

21 MS. PLACEK: It goes to the accuracy of
22 the statement.

23 THE COURT: The objection is overruled.

24 THE WITNESS: W-a-i-s-t-e is the way it's in here.

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Q And W-a-s-t-e is--

A That's the way it is in the statement.

Q So which is the correct way? Is it correctly spelled in the statement or is it incorrectly spelled in the statement?

A It's incorrectly spelled in the statement.

Q Did you catch that when you supposedly read the statement over two times?

A No, because I'm not a spelling whiz, as everyone knows that.

Q Let's go one step further.

Am I correct in saying that, although not a spelling whiz, that the name Jerome Hendricks, as in "Statement of," is written on the top of the page?

A That's correct.

Q Was that written by yourself?

A Yes.

Q And I take it that supposedly all witnesses and all-- Withdraw that.

Am I correct in saying that the purpose of your investigation at the police station was a gentleman by the name of Jerome Hendricks?

A Yes.

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SF-IL-24A

1 Q Am I correct in saying that you knew
2 the defendant's name that night?

3 A Yes.

4 Q But am I correct in saying that not even
5 half the page down you referred to the defendant in
6 this statement as Jerome Hopkins?

7 A That's correct, and that's where I have it
8 crossed out.

9 Q Thank you. But the original is Hopkins,
10 correct?

11 A Yes.

12 Q And am I correct in saying that you knew,
13 in fact, that you were investigating the death of a
14 female?

15 A Yes.

16 Q Am I correct in saying that there was
17 at the time, allegedly, no question as to both the
18 witnesses and your conversation with Mr. Hendricks, that
19 a female was involved in this matter? Correct?

20 A Yes.

21 Q Am I correct in assuming, on the second
22 page, you, in fact, referred to the victim of this
23 crime not as a female, but as a male?

24 A Yes, and there is a correction.

1 Q Thank you. But the correction was made
2 at a later time, correct?

3 A Yes.

4 Q Thank you. By the way, these mistakes
5 weren't purposely made by you in order to authenticate
6 the statement, were they?

7 A I'm sorry?

8 Q These mistakes I'm speaking to here and
9 the miscalling of the defendant by another name,
10 weren't purposely made by you in order, for some
11 reason, to authenticate the statement in front of a
12 judge or jury if later called to testify, correct?

13 A You're absolutely correct.

14 Q You didn't intentionally make these
15 corrections?

16 A No.

17 Q Thank you. Now, as to the statement
18 itself, you spoke of taking the statement and speaking
19 to witnesses, correct?

20 A I'm sorry?

21 Q You spoke of one of your reasons was for
22 only being there was to take a statement, but also
23 speaking to witnesses, correct?

24 A Yes.

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SF-IL-24A

1 Q To the best of your knowledge and
2 experience as an Assistant State's Attorney, do
3 your witnesses-- Are witnesses ever asked to make
4 statements?

5 A Make handwritten statements?

6 Q That's correct.

7 A Yes.

8 MS. PLACEK: Thank you.

9 May I have one moment, Judge?

10 THE COURT: You may.

11 MS. PLACEK: Am I correct that in this
12 statement Mr. Hendricks never stated that he forced
13 the young lady to stay in the garage?
14

15 A In the handwritten statement? On the
16 oral statement?

17 Q That's correct.

18 A He never used the word "forced," no.

19 Q Am I correct in saying that Mr. Hendricks
20 never stated that he forced the young lady to enter the
21 garage?

22 A Correct.

23 Q At the time you took this statement did you
24 know how long Mr. Hendricks had been in the police
station?

1 A I believe that he initially went to the
2 police station the night before.

3 Q Do you know what time the night before?

4 A No, I don't.

5 Q Thank you.

6 At the time that you took the statement
7 did you do it with the knowledge that the police had
8 information that the alleged victim of this crime was
9 seen alive on August-- During the early morning hours
10 of August 2nd?

11 MR. MURPHY: Objection.

12 THE COURT: What's the basis?

13 MR. CASSIDY: Hearsay. Calls for a conclusion.

14 THE COURT: Hearsay?

15 MR. LUFRANO: Your Honor, it's not hearsay.
16 It's not requested to establish the truth of the matter
17 asserted, merely whether or not, whether that is true
18 or untrue, this witness heard it.

19 MR. CASSIDY: What's the relevance of it,
20 Judge?

21 THE COURT: Well, it may bear upon-- It may
22 bear upon the totality of the circumstances surrounding
23 the taking of the statement from this witness, or from
24 the defendant.

1 MR. CASSIDY: State of mind, if I understand
2 you correctly, what the attorney's state of mind was?

3 THE COURT: No, no, the totality of the
4 circumstances surrounding the circumstances under
5 which this defendant's statement was taken, and to
6 that extent what she knew about this investigation
7 may very well bear upon what she put into her handwritten
8 statement that she now attributes to the defendant.

9 MR. CASSIDY: She said she didn't put it
10 in. She said he did.

11 THE COURT: Well, it's entirety of her
12 statement.

13 MR. CASSIDY: But it was his words, not hers.

14 THE COURT: Well, that's what she contents.

15 MR. CASSIDY: Right.

16 THE COURT: And to that extent I am going to
17 have to weigh the credibility of that.

18 MR. CASSIDY: All right.

19 THE COURT: And to weigh that I'm-- I must
20 know all of the circumstances around the giving of
21 the statement perhaps. At least, certainly, that's what the
22 defendant is going to say to me.

23 The objection is overruled.

24 MS. PLACEK: Ma'am, could you answer the

1 question?

2 THE WITNESS: I'm sorry. Repeat the question.

3 Q Surely. Did you have knowledge, at
4 the time when you were questioning the defendant,
5 that the Chicago Police had information that the
6 alleged victim of this crime was, in fact, seen
7 alive by two people during the early morning hours
8 of August 7th-- Or August 2nd? Pardon me. August
9 2nd, 1988?

10 A I don't believe I did, no.

11 Q Did you have knowledge, at the time you
12 were taking the statement, that, in fact, the family
13 of this young lady had problems with her running
14 away?

15 MR. MURPHY: Objection, Judge.

16 THE COURT: Objection sustained.

17 MS. PLACEK: It goes again, Judge, as to--

18 THE COURT: The objection is sustained.

19 MS. PLACEK: All right.

20 Did you have knowledge, at the time
21 that you were taking the statement, that, in fact,
22 the young lady had an argument with, in fact, Yulanda
23 Hill?

24 A No, I was not.

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SF-IL-24A

1 Q Did you have knowledge, at the time of
2 questioning the defendant, that the Chicago Police
3 had information that, in fact, this argument was
4 about the alleged victim being-- Or going with
5 older men?

6 A No.

7 Q Did you have knowledge, when questioning
8 this defendant, that on the 2nd of August, that the
9 Chicago Police got the legal guardian to accompany
10 them, one Mrs. Hill, and search an area where they
11 believed that the young lady was, in fact, hiding?

12 Did you have that knowledge when you
13 were questioning the defendant?

14 A That the legal guardian had gone with the
15 police to look at a place where she normally would
16 hide?

17 Q Yes.

18 A No, I did not..

19 Q Did you have knowledge that-- At the time
20 when you were questioning the defendant, that the
21 police had within their privy knowledge that
22 Denise Johnson would often run to the home of her
23 grandfather?

24 MR. CASSIDY: Objection, Judge.

1 THE COURT: Sustained.

2 MS. PLACEK: Did you have knowledge that her
3 grandfather-- Strike that.

4 Did you have knowledge that the
5 Chicago Police had written their reports, knowledge
6 that the grandfather had often to call the police
7 to make Denise go home?

8 A No.

9 Q I believe that at the beginning of my
10 cross examination we spoke about a person by the
11 name of-- I think you identified him as Charles Walker,
12 and I said could it have been Michael Walker. Correct?

13 A Yes.

14 Q Did Michael Walker ever tell you that
15 he had helped the family of the young girl look,
16 approximately on August 1st, for her when she first
17 became a missing person?

18 MR. MURPHY: Objection, Judge.

19 THE COURT: Sustained.

20 MS. PLACEK: It goes to impeachment, Judge.

21 THE COURT: Sustained.

22 MS. PLACEK: Would the Court entertain
23 argument as to that?

24 THE COURT: No. Put another question.

1 MS. PLACEK: Your Honor, we would have no
2 further questions. Thank you.

3 THE COURT: Redirect?

4 MR. CASSIDY: No questions, Judge.

5 THE COURT: Thank you, Miss Demacopoulos. You
6 may step down.

7 (Witness Excused)

8 THE COURT: Mr. Murphy, I suppose it would
9 be futile to call your next witness at this hour of
10 the day.

11 MR. MURPHY: Judge, I don't think we'd even
12 finish the direct before five o'clock.

13 THE COURT: Can we have any useful discussion of
14 the problem that's going to occur with your next
15 witness, or is the time also too short for that?

16 MR. MURPHY: Well, Judge, I was under the
17 impression the Court was going to hear the testimony
18 of those witnesses and then make a determination
19 as to whether or not to consider it.

20 MS. PLACEK: With all due respect to Mr. Murphy,
21 it was our understanding that, in fact, although the
22 Court was when this was originally a jury trial, one
23 of the reasons it was waived is that the Court was
24 going, in fact, to allow the the State to mention it

1 in opening, but before said witnesses were called
2 they would, in fact-- The Court would hear argument
3 as to same.

4 THE COURT: The difficulty, obviously, is
5 that in order to rule on this question, I'm going
6 to have to hear the evidence. And since there is
7 no jury sitting here, it seems rather ridiculous
8 to hear this evidence preliminarily, determine that
9 it is either admissible or not admissible, and then,
10 if admissible, to hear it over again.

11 Now, that's a foolish procedure. I'm
12 going to hear this evidence one way or the other at
13 some point or another, and you're going to have to
14 trust me to use it for the proper purpose. I've
15 got to hear it in order to know whether or not the
16 evidence is admissible.

17 If it were a jury, I would hear it
18 outside the presence of the jury and make preliminary
19 determinations of admissibility. And if I
20 determined that it was admissible, I'd bring the
21 jury in and let them hear it. But there is no jury
22 to hear it. I'm going to hear it.

23 MS. PLACEK: With all due respect, Judge,
24 although I talk as a stranger in a strange land, so
to speak, and have not tried as many cases in this--

1 THE COURT: And I'm here as a stranger from
2 a foreign land also. Sometimes I think not even
3 from this earth.

4 MS. PLACEK: I've heard that rumor, Judge.
5 But be that as it may, the point I would make to
6 the Court is that although we have put, so to
7 speak, this case in the Court's hands, my suggestion
8 would be instead of hearing the evidence, that an
9 offer of proof, in fact, be made as to why this
10 evidence fits the so-called fingerprint category
11 as required by Illinois law.

12 THE COURT: I fail to see what difference it
13 makes. If they give me-- If the State gives me
14 an adequate offer of proof, and I would let them
15 prove that up by putting the witness on the stand
16 and direct examine him for the offer of proof, or
17 even assuming that they were to write out an offer
18 of proof with detailed and explicit offers of
19 proof, I still get all of the information that they
20 would seek to deliver to me, and it's unavoidable.

21 But I hope, I hope, that I am
22 intellectually gifted enough and intellectually
23 honest enough to sift out that which is relevant
24 and that which is admissible from that which is not,

1 and if I can't make that determination, then
2 your client is before the wrong forum.

3 MS. PLACEK: With all due respect, I
4 would never insult a--

5 THE COURT: Well, it isn't a matter of
6 insulting. It's a very difficult mental gymnastics
7 sometimes to perform, but I'm going to undertake
8 it. I don't suggest that you-- That I'm going to
9 be successful in doing it. I am often not as
10 successful as I'd like to be, but I'm going to
11 give it my best shot and use it for its only
12 proper purpose, and I'm going to hear it, and if I
13 decide that it's not admissible, not relevant for
14 the purpose that it's sought to be offered, I'm
15 going to do my best to totally disregard it for any
16 purpose whatsoever.

17 MS. PLACEK: With all due respect, Judge,
18 although we did receive a motion, the motion was
19 vague in nature. I am speaking of the motion for
20 other crimes. We would just ask, before the calling
21 of the witness, the State to give us the specifics
22 for this witness being called.

23 THE COURT: Well, I already decided-- Well,
24 as I understand the law, there is only one way in which

1 this evidence can come before the fact finder, and
2 that is under the so-called doctrine of modus
3 operandi, signature crime, and if it-- If they
4 meet the requisite for that, I'm going to hear it
5 and use it for that purpose.

6 If they do not, I will hear it to
7 determine that it does not, and disregard it. Now,
8 other than that, Miss Placek, I don't know what you
9 can do.

10 MS. PLACEK: Judge, I might need-- I would
11 just suggest that I just take the Court's ruling
12 and ask the Court whether or not-- I just ask the
13 Court's permission to place my motion before it
14 at the end of, in fact, the direct examination of
15 the witness.

16 MR. MURPHY: Judge, for the record, perhaps
17 counsel forgot, but we did tender police reports
18 with respect to each of these incidents well in
19 advance before this trial began.

20 MS. PLACEK: I have no objection. That's
21 why I-- As to the method used. I didn't mean to
22 create confusion.

23 THE COURT: As to Mr. Jerome Hendricks,
24 Order of Court, February 20th, 1991. Court stands

1 adjourned until nine thirty tomorrow morning.
2 (Whereupon the further proceedings
3 in the above entitled cause were
4 continued to February 20th, 1991.)
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STATE OF ILLINOIS }
COUNTY OF COOK } ss

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of . . . VOLUME ONE . . . OF A FIVE VOLUME . . . SUPPLEMENTAL RECORD CONSISTING OF THE (REPORT OF PROCEEDINGS) ONLY. NO PRAECIPE . . . HAVING BEEN FILED PURSUANT TO THE NOTICE OF APPEAL FILED IN THE APPELLATE COURT . . . UNDER APPELATE COURT NO 95-0474.

in a certain cause . . . LATELY . . . pending in said Court, between The People of the State of Illinois. . . . WERE . . . , Plaintiffs and JEROME HENDRICKS . . . WAS . . . , Defendant. . .



Witness: AURELIA PUCINSKI,
Clerk of the court, and the Seal thereof, at Chicago
In said County, JUNE 26, . . . , 19 96..

Aurelia Pucinski
Clerk

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CCCR-310

95-174
Transcript of Record
Appeal
to
APPELLATE
FIRST **Court of Illinois**
District

SUPPLEMENTAL RECORD

Circuit Court No. 88 CR 12517

Trial Judge LEO HOLT

Reviewing Court No. 95-0474

THE PEOPLE OF THE STATE OF ILLINOIS

FILED
APPELLATE COURT

JUL 15 1996

GILBERT S. MARCHMAN
CLERK

VS.

JEROME HENDRICKS

from
CIRCUIT COURT
of
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

ORDER ENTERED
JAN 7 / 2007
APPELLATE COURT, FIRST DISTRICT

AURELIA PUCINSKI

Clerk of Court

VOLUME TWO OF FIVE VOLUME S
SUPPLEMENTAL RECORD

Per AP/nd

Deputy

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS:

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS,) Criminal
7 Plaintiff,) No. 88 CR 12527
8 vs.)
9 JEROME HENDRICKS,)
Defendant.)

10 BENCH TRIAL

11 REPORT OF PROCEEDINGS had at the hearing
12 in the above-entitled cause before the HONORABLE
13 LEO E. HOLT, Judge of said court, on the 20th
14 day of February, 1991.

15 APPEARANCES:

16 HONORABLE JACK O'MALLEY,
17 State's Attorney of Cook County, By:

18 MR. SCOTT CASSIDY and
19 MR. JOHN MURPHY,
Assistant State's Attorneys,
for the People of the State of IL.

20 MR. RANDOLPH N. STONE,
21 Public Defender of Cook County, By:

22 MS. MARIJANE PLACEK and
23 MR. VINCENT LUFRANO,
Assistant Public Defenders,
for the Defendant.

24 L. B. STONE, CSR
Official Court Reporter

1 THE CLERK: Jerome Hendricks.

2 THE COURT: We need Mr. Lufrano.

3 MR. MURPHY: Judge, may I address one
4 preliminary matter regarding this matter?

5 THE COURT: You want to wait for Miss Placek?

6 MR. LUFRANO: I would rather, your Honor.

7 THE COURT: Where is she?

8 MR. LUFRANO: I thought I saw her come in.

9 THE COURT: I thought I saw her just a moment
10 ago, too.

11 Mr. Murphy?

12 MR. MURPHY: Yes, Judge.

13 THE COURT: You wanted to address the Court?

14 MR. MURPHY: Yes, Judge. Judge, on one of the
15 previous dates, counsel had asked for the address
16 of a witness that they might. That address has
17 been given to the defense. The witness is in court
18 today, and I was not aware that the defense
19 intended to call her until they advised us the last
20 day. I don't know if that would create a problem.
21 I'm referring to Estelle Fields, Judge. She has
22 been here on previous days, Judge, for the defense
23 announced their potential -- to call her as a
24 potential witness.

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2 MS. PLACEK: Judge, we would have an objection.

3 THE COURT: All right. The exclusionary rule
4 is enforced here, Mr. Murphy, and I am not going to
5 speculate as to, you know, any reasons that the
6 parties wanted literally enforce their -- both
7 sides are entitled to have it enforced, and so I am
8 going to enforce the exclusionary rule.

9 MR. MURPHY: Judge, if it would help, we would
10 be willing to indicate who we are calling today.

11 THE COURT: I don't know that that's the
12 problem, and as I say, I'm not going to inquire
13 into it. If counsel wants to waive it, that's
14 fine, I have no problem with it, but unless it's
15 agreed upon, I'm going to enforced the rule. It's
16 the safest thing to do.

17 Both sides are ready to proceed?

18 MR. MURPHY: Yes, your Honor.

19 THE COURT: Call your next witness.

20 MR. MURPHY: Judge, People call Doctor John
21 Fitzpatrick.

22 THE CLERK: Raise your right hand, sir.

23 (Witness sworn)

24 THE COURT: Sir, that microphone is on. If you
will speak directly into it, keep your voice up, we

1 will all be able to hear you.

2 JOHN FITZPATRICK,
3 a witness herein, called on behalf of the People
4 of the State of Illinois, after being first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MR. MURPHY:

9 Q Sir, would you please state your full
10 name?

11 A John J. Fitzpatrick, M.D.

12 Q What area do you live in?

13 A Oak Lawn, Illinois.

14 Q What's your occupation?

15 A I am a physician.

16 Q And are you licensed to practice medicine
17 in the State of Illinois?

18 A Yes.

19 Q How many years have you been licensed?

20 A Since 1966.

21 Q And where did you receive your
22 undergraduate education?

23 A I went to high school in St. Ignatius, and
24 I went to Cincinnati, I got a B.S. in pre. med. I

1 went to medical school in Loyola, graduated in
2 1966.

3 Q And did you receive -- what type of degree
4 did you receive from Loyola?

5 A Medical doctor, M.D.

6 Q Now, did you do an internship, doctor?

7 A I did an internship in '66 to '67 at the
8 Cook County Hospital.

9 Q And what did that internship consist of?

10 A Rotations through medicine, ob, I was on
11 anesthesia, radiology.

12 Q And, Doctor Fitzpatrick, afterwards, did
13 you specialize in any particular fields of
14 medicine?

15 A Diagnostic radiology.

16 Q Can you describe to the Court what
17 diagnostic radiology is?

18 A Radiology is broken up in three fields.
19 One of them is radiation therapy in which people
20 are treated with radioactive materials for cancer
21 and other diseases, and the other one is nuclear
22 medicines where medicine is injected into people
23 for studies, and the third is diagnostics
24 radiology, which would include nuclear medicines.

1 By using various techniques when the days before it
2 was X-rays, but now we use ultrasound, magnetic
3 resident, and we try to determine diseases that
4 patients have, and it's even gone now that we start
5 to treat patients.

6 Q What, if any, training do you have in this
7 particular field?

8 A From '67 to '68, I did -- I did my first
9 years of residency at Cook County Hospital. Then I
10 was called up in the service and serviced in Viet
11 Nam, and then in California as a radiologist, and I
12 finished my training at Indiana University between
13 '70 and '72.

14 Q And, Doctor Fitzpatrick, are you also
15 board certified?

16 A Yes, sir.

17 Q And could you tell Judge Holt what are the
18 requirements in order to become board certified?

19 A When I took it, you had to complete a
20 three-year -- three years of diagnostics radiology,
21 and you had to take a written examine and pass
22 that, and if you pass the written examine, you had
23 to go for your oral boards, and once upon
24 completing that, then you became board certified.

1 Q And what are you board certified in?

2 A Diagnostic radiology.

3 Q Do you have any other certifications?

4 A I am certified in basic life support as an
5 instructor-trainer, certified in advanced cardiac
6 life support. I am certified as a "B" reader in
7 occupation radiation chest diseases. I mean those
8 are official certifications, my examines.

9 Q And, Doctor Fitzpatrick, with respect to
10 your certification in diagnostic radiology, how
11 long have you been board certified?

12 A Since 1972.

13 Q Doctor Fitzpatrick, are you on the staff
14 of any hospitals?

15 A Cook County Hospital.

16 Q And do you -- In your work at Cook County
17 Hospital, do you work in any specialized fields
18 there?

19 A Right now I am the division chairman of
20 trauma and radiology and serve as the program
21 director. I have served as the acting chairman. I
22 am interested in chest; I was in charge of the GI
23 section for years.

24 Q And, doctor, have you had any teaching

1 positions in the area of diagnostic radiology?

2 A I am on a teaching staff at Cook County
3 Hospital.

4 Q How long have you been there?

5 A Since 19 -- Let's see, I finished my
6 training at Indiana in '72. I was in private
7 practice for 18 months, and then I joined the
8 attending staff at Cook County Hospital in '74.

9 Q What position do you hold there?

10 A Right now I am the chairman of the
11 division of radiology.

12 Q Now, doctor, is there a difference between
13 diagnostic radiology and forensic radiology?

14 A Forensic radiology is kind of a
15 subdivision of diagnostic radiology. I got
16 interested in that -- I got -- I don't know if you
17 want to go in the whole story, but I have been
18 doing forensic radiology since probably the early
19 '70s.

20 Q Doctor, could you tell Judge Holt a little
21 bit about your background in the area of forensic -
22 - Strike that. I am going to rephrase that
23 question. Could you describe to Judge Holt what if
24 any education or experience you had in the area of

1 forensic pathology?

2 A Actually probably radiology is better.

3 Q I'm sorry, forensic radiology, I'm sorry.

4 A Somewhat in mid '70s, I met Doctor Stein.
5 I did a talk, and he agreed to be on the panel and
6 did the talk with me. I did some forensic
7 radiology in Viet Nam. We had to go after pilots
8 or someone who got shot down. Then I got involved
9 to give this lecture, which Doctor Stein agreed to
10 help me because I didn't have enough material, and
11 I started giving lectures over at the Medical
12 Examiner's Office. This was somewhere in the early
13 '70s, and then the Flight 191 plane crash went
14 down, and he invited me out to work on the crash,
15 and while I was out there, I also became involved
16 with the John Wayne Gacy case. I did some of the
17 identifications on those. Subsequently, since that
18 time I have been doing all the -- Well, they send
19 me all the child abuse cases, the identifications,
20 some of the accidents, and I've lectured -- I have
21 flown to South America three times. I was part of
22 the team that went down to Argentina to identify
23 some of the disappeared -- If you ever saw the
24 show, the show of the disappeared, I was involved

1 with that. I was one of the six Americans
2 scientists and identified Josef Mengele. We were
3 sent to El Salvador --

4 MR. LUFRANO: This goes to what he did, your
5 Honor.

6 THE COURT: No, overruled.

7 MR. MURPHY Q Doctor, you may continue.

8 A Let's see, I have lectured to the F.B.I.
9 Academy, I've lectured to the Customs Agents for
10 drugs, given numerous other lectures.

11 Q And this would all be in the field of
12 forensic radiology?

13 A Yes, sir.

14 Q And, Doctor Fitzpatrick, what exactly is
15 forensic radiology as opposed to diagnostic
16 radiology?

17 A Well, diagnostic radiology, like I started
18 to say before, like other branches of medicine,
19 serves to indicate the nature or character such as
20 disease, and forensic radiology deals with the
21 application of medical knowledge and X-rays. So I
22 do part time, and it consists -- mainly I read
23 like the child abuse cases, looking for the skull
24 fractures, evidence of child abuse. I am used

1 mostly in identification or whenever there's X-rays
2 I have been called in to make identifications.

3 Q Thank you, doctor. Are you a member of
4 any medical associations?

5 A Yes, sir.

6 Q Which ones?

7 A American Academy of Forensic Sciences, the
8 American College of Radiology, the Illinois State
9 Radiology Society, the Radiology Society of North
10 America. I can't think of any other ones, but
11 those are essentially the medical societies.

12 Q Do you belong to any hospital -- Do you
13 have any hospital committee memberships?

14 A I've had lots of them.

15 Q Could you tell Judge Holt a little bit
16 about those memberships?

17 A Well, I am on the life support -- the
18 Cardiac Life Support Committee, which have been on
19 the Selection Committee for the Orthopaedic
20 Chairman for the Radiology Chairman, Utilization --
21 I can't remember some of the others.

22 Q And, doctor, have you ever participated in
23 any panels as an expert in the field of radiology?

24 A Yes.

1
2 Q What panels?

3 A There's a panel on the 191 crash that was
4 presented at the American Academy of Forensic
5 Sciences, the Mengele case was presented to the
6 American Academy of Forensic Sciences Meeting, the
7 John Wayne Gacy case, part of the task force,
8 Illinois Task Force on child abuse after Channel 2
9 or whoever had the -- Actually it was before
10 Channel 2, so they had nothing to do with it, but
11 people who would be on the panel when they would
12 talk about that, we put out several documents on
13 that. I was part of the task force that met with
14 members of the United Nations, Clyde Snow was
15 there, some people from England, Jordan Thompson
16 from Denmark. There's an international committee
17 that was called the Minnesota Protocol for short,
18 and I won't have the name right, but it's a
19 protocol for people to be free from summary
20 excursion (phonetic), and something else which is
21 now going through the UN faster than any other
22 thing, through the second stage, and it's expected
23 in a year or two to be international law. It's now
24 part of the common law, whatever it is, but it's in
the UN now. It's no longer called the Minnesota

1 Protocol.

2 Q Have you written any material that's been
3 published?

4 A Yes, sir.

5 Q Could you tell Judge Holt a little bit
6 about that?

7 A There was a book put out by, I think --
8 Well, part of '84 and '85, there was Archeology
9 Battle of Little Big Horn, and I am terrible on
10 names, I think it was Fox who's the arthur, but
11 there's a chapter by Clyde Snow of the Osteology of
12 the Bones that were found at this last Big.

13 Q What does that mean, doctor?

14 A Osteo is bone. Anything with o-l-g-y is
15 study, so it's the study of bones, so it had to do
16 with the radiology of the bony fragments that were
17 found as they went over the battle field. Other
18 people did with firearms and buttons and other
19 artifacts. I published an article on with some
20 people from the Armed Forces Institute of
21 Pathology on identification of mass disasters. I
22 had another article on human rights, Radiology
23 Human Rights, another article on special
24 positioning for identifying people.

1
2 Q And, doctor, during your career, have you
3 ever won any awards?

4 A Yes, sir.

5 Q What awards have you won?

6 A Well, I got the Air Force Commendation
7 Medal. I gave a lecture, which was in Brazil, and
8 I got a medal from the mayor. I gave a lecture on
9 drugs, and they had a meeting on the West Africa
10 Narcotics Trade, they gave me an award.

11 Q How many times have you made comparisons
12 of X-rays for identification?

13 A In forensic areas?

14 Q Yes, sir?

15 A Years ago when I was with Cook County, and
16 that was over 200.

17 Q Have you ever been qualified as an expert
18 in the field of either diagnostic or forensic
19 radiology?

20 A Yes.

21 Q Approximately how many times?

22 A For forensic, probably about 10.

23 Q And how many times in the State of
24 Illinois?

A Most are in the State of Illinois.

1
2 Q Have you been qualified as an expert in
3 any other states?

4 A Yes.

5 Q What other states?

6 A Delaware.

7 Q And, doctor -- Strike that question.

8 MR. MURPHY: I have no further questions,
9 Judge. At this time I would tender Doctor
10 Fitzgerald as an expert.

11 MR. PLACEK: No questions.

12 THE COURT: You may proceed, Mr. Murphy.

13 MR. MURPHY: Thank you, Judge.

14 Q Doctor, I'd like to direct your
15 attention to early August, 1988, did you have an
16 association with the Medical Examiner's Office?

17 A Yes, sir. I am the consultant on staff at
18 the Medical Examiner's Office.

19 Q Are you still on staff there?

20 A Yes, sir.

21 Q And in what capacity do you work as a
22 consultant with the Medical Examiner's Office?

23 A I am their radiologist.

24 Q On or about August 12, 1988, did you have
occasion to work as a consultant on a case with the

1 Medical Examiner's Office?

2 A Yes, sir.

3 MR. MURPHY: May I approached the witness, your
4 Honor?

5 THE COURT: You may.

6 MR. MURPHY Q Doctor, I am going to show you
7 various exhibits --

8 MR. LUFRANO: If we could see the exhibits.

9 MR. MURPHY: Counsel, you've previous seen
10 them.

11 MR. LUFRANO: I know, but I don't know which
12 ones you're showing.

13 MR. MURPHY: For the record I am showing the
14 exhibits to counsel for the defendant.

15 Q Counsel, I'm going -- Doctor, I'm
16 going to show you what's been marked as People's
17 Exhibit No. 14 for identification. I'm going to
18 ask you to look at this particular exhibit and tell
19 me if you recognize it.

20 A Yes, sir.

21 Q And how do you recognize it, doctor --
22 Strike it. What do you recognize it to be?

23 A These are -- They are two radiographs of
24 the hand of the child.

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Q Which hand is that?

A The left hand.

Q And how do you recognize that exhibit?

A You mean the name or that it's a left hand or both?

Q Both. Well -- How do you recognize that that's, in fact, the left hand that's shown in that exhibit?

A Well, there are several ways of doing it. One, this marker could only be in one of four places, here (Indicating), here (Indicating), here (Indicating), or here (Indicating). Second of all, the filming on the left hand is shot this way (Indicating).

Q And apart from recognizing --

THE COURT: What exhibit is this, Mr. Murphy?

MR. MURPHY: This is No. 14, Judge.

THE COURT: All right.

MR. MURPHY Q Apart from being able to recognize that is an X-ray of a left hand, is there any other way that you're able to recognize what that exhibit is?

A Well, the technician, but a left marker up here (Indicating).

1 Q And what's the marker indicate, doctor?

2 A This marker here (Indicating)?

3 Q Yes.

4 A This is a pitch radiograph of --

5 MS. PLACEK: Objection as to what the marker
6 indicates, Judge.

7 THE COURT: Overruled.

8 THE WITNESS: This is the left marker. The C
9 is probably the technician's name. This was taken
10 at Roseland Community Hospital.

11 MR. LUFRANO: Objection where it was taken
12 because he had no way of knowing where it was
13 taken.

14 THE COURT: Overruled.

15 MR. LUFRANO: He's simply reading the label
16 that's on that.

17 THE COURT: Overruled.

18 THE WITNESS: And the label says it's also
19 Denise Johnson.

20 MR. MURPHY Q Doctor, I am also going to show
21 you what's been marked as People's Exhibit No. 4
22 for identification purpose. Do you recognize what
23 that exhibit is?

24 A Yes, sir.

1 Q What do you recognize that to be?

2 A This is a radiograph taken at the Medical
3 Examiner's Office on 9, August, '88, on body number
4 262, August, '88, which also label Denise Johnson.

5 Q And I'm also going to show you what has
6 been marked as People's Exhibit No. 15.

7 MS. PLACEK: Objection.

8 THE COURT: What's the basis of your objection?

9 MS. PLACEK: I believe, Judge, if I am not
10 correct, that exhibit has never been identified or,
11 in fact, entered into evidence as to the purpose of
12 comparison.

13 THE COURT: It was identified by the technician
14 that took it.

15 MR. LUFRANO: No, your Honor. He said he did
16 not take it.

17 THE COURT: I am talking about the technician
18 who too the -- What was her name?

19 MR. CASSIDY: Carolyn Strong.

20 MS. PLACEK: There was an objection, Judge,
21 proffered at that particular time. I believe at
22 that particular time the Court barred the State
23 from going into this particular area. I believe
24 there was a long discussion as to medical records.

1 The State said they could get it in under the
2 business -- medical records exception. I believe
3 she stated that as a matter of fact, she didn't
4 take that particular exhibit, Judge. This is of
5 the pelvic region. I believe we went as to a
6 sidebar.

7 THE COURT: Do you have the technician's name
8 on that --

9 MR. MURPHY: Judge, as to that particular
10 exhibit, there was no technician called.

11 THE COURT: The objection is sustained.

12 MS. PLACEK: I ask that it be withdrawn from
13 the witness.

14 MR. MURPHY: Judge, I believe the witness still
15 can identify the exhibit, and I would rely on
16 Wilson versus Clark.

17 MS. PLACEK: There's no relevancy of the matter
18 or foundation established.

19 THE COURT: Wilson versus Clark, how would
20 Wilson versus Clark allow it to come in,
21 Mr. Murphy? I think I am relatively familiar with
22 Wilson verses Clark, and I think that that was the
23 reason for the overruling previous objections made
24 to the testimony of this witness in regard to the

1 other exhibits, but related specifically Wilson
2 versus Clark to this exhibit, Exhibit 15, that is.

3 MR. MURPHY: Judge, with respect to this
4 particular exhibit, in the Wilson versus Clark
5 case, certain exhibits were put into evidence:
6 Hospital records, which contained approximately a
7 hundred pages of technician medical inference
8 including the history sheets, laboratory reports,
9 administration sheets, X-ray reports, progress
10 reports, pathology reports, so on. The Supreme
11 Court of Illinois determined that the admission
12 into evidence of those reports was in error.
13 However, the Court holds specifically in Wilson
14 versus Clark held that it was unnecessary for those
15 hospital records to be admitted into evidence in
16 order to elicit an expert medical opinion based on
17 those records. Specifically, the Court stated in
18 the opinion, your Honor, and I am reading directly
19 from Page 312 of the Illinois decisions book, "We
20 hold that in the future as later stated due to the
21 high degree of reliability of hospital records, and
22 expert may give his response to a hypothetical
23 questions based on facts contained in those reports
24 being even in the records, themselves, are not any

1 evidence."

2
3 And, your Honor, in Wilson versus
4 Clark, decision that they determined that it was a
5 high degree of medical reports. Your Honor, when
6 we get to the point where we would offer that
7 particular exhibit into evidence, there may be
8 other questions which may be asked with respect to
9 admitting them into evidence, but at this
10 particular point, Judge, I believe that since
11 Doctor Fitzpatrick has been qualified as an expert
12 in this area, he can certainly rely on an X-ray
13 report, which is a hospital record even if it is
14 not admitted into evidence, and I agree with the
15 defense at this point, we have not established a
16 foundation for that to be admitted into evidence,
17 but that does not bar Doctor Fitzpatrick from
18 rendering his opinion on that particular exhibit as
19 well.

20 THE COURT: Defense?

21 MS. PLACEK: Judge, I believe Wilson versus
22 Clark as counsel correctly stated, deals, in fact,
23 with the hypothetical bases on measured results,
24 with all due respect to the doctor, Judge. In the
current case, even as to the X-rays, which the

1 Court overruled the objection to, and I am
2 referring to, I believe, State's number 14, there
3 has been no nexus shown as to first, the alleged
4 victim -- the named victim of the indictment, and,
5 secondly, Judge, as to the pelvic region, I believe
6 even under Wilson versus Clark, the reliability
7 was, in fact, sheared up by certain foundational
8 witnesses, with all, again, due respect to the
9 doctor.

10 This gentleman, nor has it been shown
11 by any foundational questions of the State that he
12 was either the treating or, two, familiar with the
13 procedures that led to what essentially is nowhere
14 previous into evidence, that is the X-ray, which
15 the State seeks to introduce.

16 THE COURT: Well, I don't know if that answers
17 the question that's before me. As I understand
18 Wilson versus Clark, the witness may testify and
19 render his opinion based upon his expertise and
20 examination of records, which under certain
21 circumstances would be considered hearsay if, in
22 fact, they are the kind of people that people in
23 his areas of expertise rely upon in formulating
24 their expert opinions. The case of a physician,

1 the reading of other medical records or the reading
2 of other documents, which are customarily used in
3 formulating, diagnosing, and treating patients,
4 then the physician can testify and render an
5 opinion based upon these documents, and that's true
6 whether or not they are admitting into evidence,
7 and the posture of this case, which is conceded by
8 Mr. Murphy, is the failure now to directly connect
9 them, 15, to the deceased in this case. That does
10 not mean that I can't receive this evidence subject
11 to it being connected. If it does get connected in
12 some kind of way, then, of course, it just stands
13 there with no relevance to it. But you might say
14 that the order of proof is reversed or not proper
15 or could be better presented, and I don't have any
16 problem with receiving this evidence out of order
17 if, in fact, it is out of order.

18 MS. PLACEK: Your Honor, as a matter of
19 question, and I do ask the Court's indulgence for a
20 second, I would just ask the Court to ask the State
21 whether or not since they are planning on resting
22 today or that was at least their premise, whether
23 or not they have something to --

24 THE COURT: I am not going to ask them,

1 Miss Placek. If the State rest their case without
2 putting in the proper proof, I know what to do with
3 that. The objection is overruled.

4 MR. LUFRANO: Your Honor, there is also a
5 difference between the hypothetical and use of
6 documentation and results in a hypothetical, nd the
7 use of documentation.

8 THE COURT: Wilson versus Clark didn't deal
9 with a hypothetical. Wilson versus Clark stands
10 for the proposition that the witness who has the
11 expertise may testify by using any document that's
12 normally and customarily used by persons with that
13 degree of expertise in formulating opinions and in
14 a -- we were talking about a physician. You're
15 talking bout medical records of a patient, all of
16 them.

17 MR. LUFRANO: Right, the ones he takes and the
18 ones other treating physicians tendered to him.

19 THE COURT: Wherever he receives it from. It
20 doesn't make any difference. If it is the kind of
21 record that he would normally rely upon in
22 practicing his profession, then he can testify
23 about that. The other problems that you raise may
24 deal with weight to be given to his testimony in

1 which you will have a right to cross-examine him
2 about, but that does not destroy admissibility.

3 The objection is overruled.

4 MR. MURPHY: Thank you, Judge.

5 Q Doctor, perhaps I could start over
6 with this exhibit showing you People's Exhibit No.
7 15, I believe you testified you recognized that, is
8 that correct?

9 A Yes, sir.

10 Q And what do you recognize that to be?

11 A This is a radiograph of a young child.

12 Q And how do you recognize that particular
13 exhibit?

14 A Well, again, it's labeled from Roseland
15 community Hospital, and --

16 MS. PLACEK: With all due respect to the
17 doctor, there would be an objection to
18 authentication through the exhibit, itself.

19 THE COURT: The objection is overruled.

20 You may proceed.

21 THE WITNESS: And it has the patient's name on
22 it.

23 MR. MURPHY Q What's the name?

24 A Johnson, Denise, and it has the No. 692,

1 which I assume is the case number or some other
2 number that they use for identification.

3 Q In addition to that, doctor, is there also
4 a date on the X-ray plate?

5 A There's this one written -- I'd have to
6 see. There's one written here, 87 something, 15,
7 87.

8 Q Would that be 1, 15 or 10, 87.

9 A Something like that.

10 Q And, doctor, I'm also going to show you
11 what's been marked as People's Exhibit No. 2 for
12 identification purposes, could you recognize that?

13 A Yes, sir.

14 Q And what do you recognize that to be?

15 A This is a radiograph of a pelvic on a
16 body, 262, August, '88 taken at the Medical
17 Examiner's Office on 8/9/88.

18 Q Now, doctor, before you came in today, did
19 you have occasion to look at those four radiographs
20 before?

21 A Yes, sir.

22 Q Approximately when did you look at those?

23 A Sometime in August.

24 Q Would that be August of 1988?

1 A Whenever I did it, I report it right after
2 I read it.

3 Q And, Doctor Fitzpatrick, when you looked
4 at those four particular radiographs -- Strike
5 that. Let me rephrase that question. Does those
6 exhibits that you've looked at, People's Exhibit
7 14, 15, and 2, do they fairly and accurately
8 portray the bones and other internal structures of
9 the person who's shown in those exhibits as they
10 appeared to you on August 12 or in early August,
11 1988?

12 MS. PLACEK: Objection to the form, Judge.

13 THE COURT: Overruled.

14 THE WITNESS: They portray the skeleton on the
15 post-mortem film is a lot of decomposition gas, so
16 the muscles organ and a lot of the pelvic muscles
17 are not seen for the skeleton.

18 Q Doctor, particularly with respect to
19 People's Exhibit No. 14 and No. 4, what if anything
20 did you do with those particular exhibits?

21 A Well, I look at -- You mean to identify
22 them?

23 Q Yes, what did you do when you received
24 them?

1
2 A Usually what I do is I take out all of the
3 films on the jacket, look at them, and pick the
4 ones that I will be able to make the comparison the
5 easiest and start with that set of film, which I
6 did in this case.

7 MS. PLACEK: Objection.

8 THE COURT: Overruled.

9 MR. MURPHY Q Were these part of a larger
10 package of films that you received?

11 A Yes.

12 Q What did you do after you received the
13 packages then? Did you pick out these particular
14 exhibits, 14 and 4?

15 A These and some other ones.

16 Q What did you do with respect to 14 and 4?

17 A I used them to compare.

18 Q Could you describe to Judge Holt how you
19 compared those exhibits?

20 A Well, I usually use a view box.

21 Q Doctor, is there anything that would
22 assist you?

23 A I look at the size, the hand, the position
24 of the hand to prove the post-mortem films. First,
I look at the size, and I start looking for

1 individual characteristics of them.

2
3 Q Doctor, is there anything that would
4 assist you in explaining better the process you
5 used in making those comparisons?

6 A I made -- I didn't make them, but I had
7 someone at the Medical Examiner's Office make
8 slides of them.

9 Q In fact, have slides been made of People's
10 Exhibit 14, 4, also People's Exhibit 2 and 15?

11 A Yes.

12 Q And would those slides help you in
13 explaining to Judge Holt the process you used and
14 the markings you found --

15 A I think it would be a lot easier.

16 MR. MURPHY: Judge, I ask that the witness be
17 allowed to step down from the witness stand.

18 THE COURT: You may.

19 MR. LUFRANO: Judge, we would object to the
20 slides. The existence of the slides were never
21 made known to us nor were we given an opportunity
22 to review the copies.

23 THE WITNESS: Okay, that's fine. It makes no
24 difference to me.

THE COURT: What's your response to that,

1 Mr. Murphy?

2
3 MR. MURPHY: Judge, our answer does list slides
4 as one of the exhibits we would use. I agree
5 counsel did not look at the slides before we
6 proceeded today. We were down here going through
7 the slides just before we started the proceedings,
8 and the attorneys were going in and out of the
9 courtroom, but the slides are exact duplicates or
10 close to exact duplicates of the radiographs, which
11 Doctor Fitzpatrick has already identified, and
12 which have been made available to the defense.

13 THE COURT: Mr. Lufrano?

14 MR. LUFRANO: Your Honor, that being the case,
15 the best evidence rule would still be appropriate.
16 The doctor said that he could use the radiographs
17 themselves. There's no reason for the slides.

18 THE COURT: No, that's not the valid objection,
19 Mr. Lufrano. I also noticed that the State's
20 amended supplemental Answer to Discovery filed on
21 January 24, 1991 and the answer No. 6, 6-A. The
22 State says that the following articles, if any, may
23 or may not be offered into evidence by the people
24 at the time of the trial of this cause, and
thereafter follows a listing of certain materials

1 including slides, which is a sufficient response to
2 alert the defense of what it is that the State
3 intends to offer into evidence, whether the defense
4 avails itself of an opportunity to view the
5 documents or other physical evidence. It's left
6 entirely in the description of the defense. There
7 has been no assertion that the defense attempted to
8 or requested and was denied permission to view
9 these documents nor was any such denial brought to
10 the attention of the Court in order to elicit the
11 assistance of the Court in compelling the right to
12 view these documents prior to trial. So the
13 objection that the defense has not had an adequate
14 opportunity to be informed that the State would use
15 the documents or adequate opportunity to view the
16 documents are overruled.

17 You may proceed.

18 MS. PLACEK; The only exception would be
19 comparison between two and 15, Judge, based on
20 previous lack of identification.

21 THE COURT: That objection is also overruled.

22 Doctor, you may step down.

23 MS. PLACEK: Judge, I think we are going to
24 have to move. May we have your Honor's permission

1 to move?

2 THE COURT: Mr. Johnson, you may want to turn
3 the overhead lights off.

4 THE WITNESS: The purpose of -- The purpose of
5 the slides is to make things easier, but these are
6 all on the films, everything I am showing you.

7 MR. MURPHY Q Doctor, how many slides do you
8 have -- have you prepared in order to testify
9 today?

10 A In this one (Indicating).

11 Q Yes.

12 A Only four.

13 Q Doctor, these four slides in the machine
14 are duplicates of the exhibits you've previously
15 identified?

16 A Yes.

17 Q And these slides --

18 For the record, Judge, the slides have
19 already been previously marked by myself. They
20 have been marked as 14-A, 4-A, 15-A, and 2-A.

21 Q And, doctor, do the slides, each of
22 the slides that you previously placed in the
23 machine correlate with each of the exhibits you've
24 previously identified?

1 A Yes.

2 Q Doctor, what's -- For the record one slide
3 is showing on the screen right now. That would be
4 People's Exhibit No. 14-A, is that correct?

5 A It's easier for me to say this: It's the
6 ante-mortem film. How you marked these things --
7 This is the ante-mortem film, so how do you mark
8 it?

9 Q Doctor, which slide is this (Indicating),
10 do you know?

11 A This is Case 264, and it's the ante-mortem
12 film.

13 Q Doctor, would that slide then be a
14 duplicate of what's known as four -- I'm sorry,
15 it's four?

16 A This film, and this slide go together.

17 Q So that would be 14, and that would be a
18 duplicate, then, of the exhibit, which is marked
19 Palos Community Hospital?

20 A Roseland Community Hospital.

21 Q I'm sorry, Roseland Community Hospital?

22 A Yes, sir.

23 Q And could you describe to Judge Holt with
24 the use of the exhibit exactly what your

1
2 examination of the radiograph consisted of and what
3 you found?

4 A This is a film of the wrist, hand, and
5 carpo bone, essentially this area from here to here
6 (Indicating) instead of being like this and like
7 this (Indicating), it's in between.

8 Q And what exactly did you find when you
9 examined that radiograph?

10 A Well, this is the aepasis (Phonetic),
11 this is where your bone go along, and these will
12 eventually close, so you could see that this is
13 close. This is an abickular (Phonetic) bones
14 (Indicating). This is going to be hard for you to
15 see, but there is a longitude abickular here
16 (Indicating), and there is a tiny little dot here
17 (Indicating), the cortex here (Indicating), the
18 thickness of the cortex. The three outstanding
19 landmarks that I identified for this purpose, which
20 are the easiest, there are others where these
21 three, which I thought would be most easy for lay
22 people to identify and be able to compare.

23 Q Now, doctor, you compared that what's
24 shown in that particular slide with another
radiograph, is that correct?

1 A Yes, sir.

2 Q And was the radiograph that you compared
3 it with on another slide?

4 A Yes, my radiograph is there, and I have
5 the slide radiograph.

6 Q At this point, perhaps we could advance to
7 the next slide, and you can show what your
8 comparison graphs consisted of, what you found.

9 A This is going to be hard. This is the
10 post-mortem film. It's in about the same condition
11 as the other one. This area sclerosis, you see
12 here (Indicating), is what the child has grown, and
13 her and --

14 MR. LUFRANO: Objection to the conclusion. He
15 didn't treat the child.

16 THE WITNESS: I said a child, but it's where
17 your normal plate close. You can see this is
18 different than on the other film.

19 MR. MURPHY: Judge, if I may, the exhibit is
20 fairly difficult to see. Would it be possible to
21 turn off more lights? It may show better if it's a
22 little darker in the room.

23 THE WITNESS: This is a dense area of sclerosis
24 right here (Indicating). You have got this light

1 line here, the cortexes are about the same, so the
2 difference that you see here is due to natural
3 aging of the child, the growth of the child, but
4 these are very unusual characteristics, and there
5 are others I could point out, and this is one set
6 of the film like the hand and wrist have three
7 films to this, and I am the one that put these
8 arrows here (Indicating).

9 Q Doctor, the light, which is shown on the
10 screen at this particular time --

11 Which, for the record, Judge, has been
12 marked as People's Exhibit No. 4-A.

13 Q -- Would be a slide of what has
14 been previously identified as People's Exhibit No.
15 4, is that correct?

16 A Yes, the post-mortem film.

17 Q Thank you. And, doctor, based on the
18 comparison that you did of the radiograph, People's
19 Exhibit 4, and radiograph, People's Exhibit 14,
20 based on your education, experience, and training,
21 were you able to reach any conclusion within a
22 degree of scientific certainty which respect to the
23 person who's shown in each of those radiographs?

24 A Yes, sir. These studies alone would be

1 enough to make an identification.

2 Q What's your opinion with respect to these
3 two radiographs, which you've already identified?

4 A That they belong to the same individual.

5 Q Thank you, doctor. Did you do any further
6 examination even though you had determined that the
7 radiographs show the same individual?

8 A Yes, sir, I did the pelvis.

9 Q And do you have slides of the pelvis as
10 well?

11 A Yes, sir.

12 Q Could you -- Perhaps we could advance on
13 to the next slide. Can you describe to Judge Holt
14 what's shown in the next exhibit?

15 For the record, Judge, that's marked
16 as People's No. 15-A.

17 THE WITNESS: This is a pelvic bone
18 (Indicating). These are your hips right here
19 (Indicating), lower lumbar spine, this is an
20 examination of the pelvis, and it's an ante-mortem
21 radiograph.

22 Q And what if anything did you find peculiar
23 with respect to this particular radiograph?

24 A The spine process and the transverse

1 process, as we go up, are like fingerprints.

2 MR. LUFRANO: Objection to just like
3 fingerprints.

4 THE COURT: Overruled.

5 THE WITNESS: All right. I can -- Overruled.

6 THE WITNESS: All right. I can --

7 THE COURT: Overruled.

8 MR. MURPHY Q You may continue, doctor.

9 A This is a spinose process. The apeti
10 (Phonetic) coils, which are -- the spine is built
11 something like a church pew of the body where
12 everybody go in. The peticles (Phonetic) is where
13 the steeples go up, and up by the cross would be
14 the spinose process. Over here (Indicating) we
15 have what we call awkward lines, these are cortical
16 bones where the nerves are coming out. This is the
17 transverse process. We have canals in here
18 (Indicating), and a lot of other things.

19 Q And, doctor, is that slide -- Does that
20 slide show -- truly and accurately show what's
21 shown in the radiograph marked People's Exhibit
22 No. 15?

23 A Yes, sir.

24 Q And, doctor, did you compare that

1
2 radiograph, People's Exhibit No. 15 which another
3 radiograph?

4 A Yes, sir.

5 Q And do you have a slide of that
6 radiograph?

7 A Yes, sir.

8 Q Would you like me to advance it?

9 A Sure, go ahead. Again, I put the arrows
10 on this one, and I put the arrows on that one, but
11 you can't see them.

12 Q For the record, this would be marked as
13 People's -- this slide would be marked as People's
14 Exhibit No. 2-A. Does this slide show accurately
15 what's shown in People's Exhibit No. 2, the
16 radiograph which you looked at?

17 A Yes, this is the post-mortem radiograph or
18 the slide of the post-mortem radiograph.

19 Q And with respect to People's Exhibit No.
20 15 and 2, can you show Judge Holt on that diagram
21 what you found?

22 A The transverse processes are the same.
23 The spinose process, peticles, you can't really see
24 the lines down here. Unfortunately, the shape of
the pelvis is there.

1
2 Q Is there anything else that would assist
3 you in describing that particular X-ray?

4 A If you wanted to really see the details
5 real well, I would have to possibly -- With the
6 flashlight, I would see them. It would be hard to
7 see because of the post-mortem gas here.

8 Q Doctor, when you compared People's Exhibit
9 No. 15 and People's Exhibit No. 2, the two
10 radiographs, were you able to reach a conclusion
11 based on your experience, your training, your
12 education to a degree of scientific certainty?

13 A Yes, sir.

14 Q And what conclusion did you reach?

15 A That they belong to the same individual.

16 Q Thank you, doctor.

17 A You're welcome.

18 Q You may step back to the witness stand.

19 Doctor, the conclusion you reached
20 with respect to the examination that you performed
21 of the radiograph of the wrist, the post and the
22 ante-mortem radiographs, you were able to determine
23 with those two -- with those two exhibits alone,
24 that they show the same person, is that correct?

A Yes, sir.

1 MS. PLACEK: Objection.

2 THE COURT: Overruled.

3 MR. MURPHY: I have no further questions,
4 Judge.

5 THE COURT: Cross.

6 MS. PLACEK: Very briefly without waiving the
7 objection as to the other matter.

8 CROSS-EXAMINATION

9 BY

10 MS. PLACEK:

11 Q Doctor, as you already pointed out, part
12 of your work is not only with forensic radiology,
13 but also diagnostic, correct?

14 A Yes, sir.

15 Q Please, that's not a good exhibit. Either
16 that or I have to start wearing darker lipstick.

17 A I'm sorry.

18 Q You examine what you refer to as the ante-
19 mortem X-ray of a wrist, correct?

20 A The radiograph, correct.

21 Q I'm sorry --

22 A I used radiograph, but most people use X-
23 ray.

24 Q I can use X-ray just in case I forget,

1 radiograph.

2 A Yes, that's no problem.

3 Q When you examined this, you had no idea of
4 the person or the identity of the person which was
5 presented in this X-ray, correct?

6 A I mean people bring me the films for
7 comparison, and that's all I do is compare them and
8 say they are or are not the same.

9 Q Exactly, and as to what would be the ante-
10 mortem photo of the wrist, specifically referring -
11 - and again, I am confused, I believe that would be
12 People's 14, and I show you this. Do you want the
13 flashlight?

14 A No, that one is easy.

15 Q I believe that's the correct one, correct,
16 you have no idea, and when I say no idea as to --
17 other than the information contained on the
18 identification plate under what circumstances of
19 when and how it was taken, correct?

20 A Correct.

21 Q You have no independent personal
22 knowledge, correct?

23 A I mean it's probably taken for trauma, and
24 I know it was taken at Roseland Community Hospital

1 from the label.

2 Q Other than that, you have no independent
3 knowledge, correct?

4 A Right.

5 Q Doctor, let me ask you this, and, again,
6 being more or less novice, in your field in looking
7 to that wrist, would there be any treatment given
8 to the wrist?

9 A I have no idea.

10 Q So you really don't now whether or not
11 they would or wouldn't, correct, give them any kind
12 of casting or bandages, or do you see any injuries
13 yourself that you would see any treatment?

14 A For a fracture?

15 Q For a fracture, for whatever.

16 A I'd probably have to get a hot light to
17 look at the tissue, but from what I see on these
18 two, again, they are only two part of an
19 examination, there should also be a lateral, the
20 film look normal.

21 Q So you wouldn't see any treatment that, in
22 fact, were required by those two as they are shown
23 to you?

24 A Well, the area of treatment is really out

1 of my field. I leave that to the orthopaedic
2 surgeon. As for treatment, that's somebody else's
3 field, but if there's an injury there or arthritis
4 there, that's my field.

5 Q I see, but other than that, you can't see
6 a treatment --

7 A These two films, I would say the films are
8 normal.

9 MR. MURPHY: Objection, Judge, because she's
10 continuously asking the same question.

11 THE COURT: No, I think it's proper. The
12 objection is overruled.

13 MS. PLACEK Q So when you see the films are
14 normal, the hands appear?

15 A It appears to be okay, but it doesn't
16 necessarily have to be okay.

17 Q But in these films, it appears to be okay?

18 A Yes, if I was reading the film, I would
19 say it's normal.

20 Q Thank you. Again, calling your attention
21 to your actions on the night in August, 1988, am I
22 correct in assuming that you, in fact, based your
23 opinion on both the pelvic X-rays and the hand X-
24 rays?

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A You know I really don't remember. I can do it on either one.

Q Well, let me ask you this: Did you prepare, in fact, a report in this matter?

A Yes.

Q And on that report, specifically do you speak of both the hand X-ray and the pelvic X-ray, the comparison?

A Yes.

Q Would it be correct, and, again, not meaning to correct you, but would it be correct in saying in your report at the time of the making, you didn't state I can do it in one or the hand X-ray is expository or the hand X-ray is dispositive (sic)? Quite frankly, you gave a report as to your conclusion after reading both of those X-rays?

A Yes, but I -- See I don't know which one I read first, number one. Number two, my usual routine, that's how I report it, but that doesn't mean that's the way I look at it --

Q Let me ask you --

A -- and --

Q I'm sorry.

MR. MURPHY: Objection.

1 THE COURT: Let her finish.

2 MS. PLACEK Q I'm sorry. I thought you were
3 finished.

4 A When I dictate them is after I looked at
5 the films, and which one I arrived at the
6 conclusion, it doesn't matter. Actually there were
7 four films in this case, and I looked at the chest,
8 and the other I could have also done it, but I
9 would have -- She also had a knee and a chest. I
10 would have to do some other studies possibly on the
11 chest, but I could have sat down and probably made
12 the diagnosis on those, so either one, given either
13 one of these cases, either the pelvic or the hands,
14 I would have made the identification --

15 Q I'm sorry.

16 A -- and that's what I put my report on, and
17 everybody that comes through, okay, if they have a
18 series of four cases, I look at all four of them,
19 but if two of them are going to be difficult, I may
20 throw them out, I may arrive at one of them, or I
21 may just use one of them. One is adding frosting
22 and candles and ice cream to the case; it's just in
23 addition, overkill.

24 Q But as you stated today, those are present

1
2 in your report of 8/9/88?

3 A They're not present in any of my reports
4 because that's the way I do my reports.

5 Q Thank you. Doctor, let me also ask you
6 one further question as to your identification in
7 this matter. Am I correct in saying that you
8 neither supervised the ante-mortem, the taking of
9 the ante-mortem X-rays, correct?

10 A I almost never do.

11 Q Correct, and you have no personal
12 knowledge under what conditions they were taken,
13 correct?

14 A Correct.

15 Q You have no personal knowledge as to when
16 they were taken, correct?

17 A You mean did I actually observe it?

18 Q Yes.

19 A No, but that's --

20 Q I mean --

21 A Even in my own private practice, the
22 technicians take them, and the technician's name is
23 usually not on the film, or when we have an idea --

24 THE COURT: Mr. Lufrano, I can't hear you if
you don't speak up.

1
2 MR. LUFRANO: Objection to what happens in his
3 practice.

4 MS. PLACEK Q I'm sorry, doctor, continue.

5 A What I am trying to say --

6 Q Is the technician's name is very rarely on
7 the film, correct?

8 A Yes, that's one of the things, and, two,
9 even those films I do not directly supervise.

10 Q Would it be correct, say your practice,
11 and you've had quite a few experiences within the
12 field, is not unusual to what would be done in
13 other hospitals or by other physicians?

14 A Correct.

15 Q Thank you. So would it be further correct
16 in saying just as you stated to me the technician's
17 name isn't on the X-ray, that there's nothing
18 unusual about that?

19 A That's nothing unusual; that's very
20 common. Probably that's the rule.

21 Q That's the rule. Thank you, doctor.
22 Doctor, let me just ask you this: As a matter of
23 courtesy, is EEG ever used for --

24 A You mean electroencephalogram, that's an
electrical current.

1
2 Q Is that ever used in dating? When I say
3 dating, to determine either the age of bones or at
4 the similarities to other bones?

5 A Well, that's an -- that's your brain wave.
6 As far as I know, I've never heard of it.

7 Q Thank you, doctor. I was just curious.
8 Doctor, let me ask you this: Also, as to what you
9 did on that date and time, am I correct, that
10 you're only called in to the pathology, the
11 forensic medical examiners team, so to speak, when
12 there's a question of identity?

13 A No.

14 Q Are you called in for other reasons?

15 A Yes.

16 Q And that would be for the ones where you
17 speak of other bone fractures such as in cases of
18 child abuse?

19 A Correct, I mean that's some of them, but
20 sometimes there's an automobile accident that they
21 want me to look at the head and neck.

22 Q Thank you, doctor. By the way, we talked
23 about a rule of thumb as to these X-rays, to the
24 best of your knowledge, there's nothing unusual, as
to this rule of thumb, as to the X-rays,

1 specifically as to 14 and 15 that you speak of,
2 correct?

3 A When you say rule of thumb, I am not
4 sure --

5 Q Well, I believe you stated there are
6 certain things present on the X-rays done by the
7 technician and certain things not done by the
8 technicians.

9 A I am not sure I said that.

10 Q Well, let me ask you this: I believe we
11 talked about the technician's name being on the X-
12 ray, correct?

13 A Yes.

14 Q And on 14 and 15, I believe you said that
15 that was, in fact, generally the rule, correct?

16 A It is at Cook County Hospital.

17 Q Well, let me ask you this: Is 14 and 15,
18 did you find that that rule was, so to speak,
19 broken, if you can recall?

20 A If those are of the pelvis film, the
21 technician's name is not on it, but that's no big
22 deal.

23 Q What about the 14?

24 A The initials or somebody's initials are on

1 there or at least I assume those are the initials.

2 MS. PLACEK: Thank you. That's all.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY

6 MR. MURPHY:

7 Q Doctor, you were asked a lot of questions
8 about the rule of thumb regarding the taking of X-
9 rays, in your experience as a radiologist, is the
10 name of the patient usually put on the name plate
11 on the X-ray?

12 MS. PLACEK: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 MR. MURPHY Q Is the hospital where the X-ray
16 is taken also put on the name plate of the X-ray?

17 A Yes.

18 Q Is the date that the X-ray is taken also
19 put on the name plate?

20 A Yes.

21 Q And in your experience as an officer -- In
22 your experience as a radiologist, as a rule of
23 thumb, is it your experience the information
24 contained on those plates is accurate?

1 MS. PLACEK: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 MR. MURPHY: No further questions, Judge.

5 RECROSS-EXAMINATION

6 BY

7 MS. PLACEK:

8 Q So mistakes are never made?

9 MR. MURPHY: Objection.

10 THE COURT: Objection sustained.

11 MS. PLACEK Q Let me ask you this: As a rule
12 of thumb, have you ever known of mistakes being
13 made in labeling X-rays?

14 A Yes.

15 MS. PLACEK: Nothing further.

16 THE COURT: Anything further?

17 MR. MURPHY: No.

18 THE COURT: Thank you, Doctor Fitzpatrick, you
19 may step down.

20 (Witness excused)

21 THE COURT: And you may please remove that
22 screen and call your next witness.

23 MR. CASSIDY: Judge, could we have about five
24 minutes?

1 THE COURT: There will be a five-minute recess.

2 (Whereupon a recess was taken
3 after which the following pro-
4 ceedings were had:)

5 THE CLERK: Sheet 6, Line 1, Jerome Hendricks.

6 Raise your right hand, please.

7 (Witness sworn)

8 THE COURT: That microphone is on. If you will
9 speak directly into it, keep your voice up, we will
10 all hear you.

11 You may proceed.

12 MR. MURPHY: Thank you, Judge.

13 PHYLLIS WILLIAMS,
14 a witness herein, called on behalf of the People
15 of the State of Illinois, after being first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. MURPHY:

20 Q Would you state your name and spell your
21 last name for the Court Reporter?

22 A My name is Phyllis W-i-l-l-i-a-m-s.

23 Q Phyllis Williams?

24 A Yes.

1 Q And, Phyllis, how old are you?

2 A I am 31 years old.

3 Q What's your date of birth?

4 A April 11, 1959.

5 Q And, Phyllis, I'd like to direct your
6 attention to the date of June 30, 1984 --

7 MR. LUFRANO: Your Honor, we have an objection.

8 THE COURT: June 30, 1984?

9 MR. LUFRANO: Objection to the testimony and a
10 continuing objection. I know the Court wants to
11 hear it first, but if the record would reflect a
12 continuing objection?

13 THE COURT: The record may so reflect.

14 You may proceed.

15 MR. MURPHY Q Do you remember that day, June
16 30, 1984?

17 A Yes, I do.

18 Q And, Phyllis, where were you living at
19 that time?

20 A I was staying 7416 Phillips.

21 Q Would that be South Phillips?

22 A South Phillips.

23 Q And, Phyllis, on that particular day,
24 during the evening hours, did anything unusual

1
2 happen?

3 A Yes, it did.

4 Q What happened?

5 A I just got up, got myself dressed, was
6 going out to make a telephone call, and I went
7 through the hallway. As I was coming out the door,
8 I saw that gentleman there (Indicating).

9 Q Could you please point to the gentleman
10 you described as that gentleman and indicate an
11 article of clothing that he is wearing?

12 A Yes.

13 Q What's he wearing?

14 A He's wearing a sweater, white shirt, and
15 gray and red sweater (Indicating).

16 MR. MURPHY: May the record reflect in-court
17 identification of the defendant.

18 THE COURT: It may so reflect.

19 MR. MURPHY Q It was during the evening hours
20 of June, 1984, is that correct?

21 A Yes.

22 Q And, Phyllis, you said you were in a
23 hallway, is that right?

24 A Yes.

Q What hallway were you in?

1
2 A I was in the hallway, as -- like if you're
3 going in, and she's coming in.

4 Q And can you describe what happened when
5 the defendant, Jerome Hendricks approached you?

6 A He was sitting on his stool right beside
7 his door --

8 Q Where was his door at?

9 A His door is as you come in, it's a little
10 basement apartment.

11 Q He lived in the same apartment then, is
12 that correct?

13 A He lived in the same court-way building I
14 live in.

15 Q But in a different apartment?

16 A A different apartment.

17 Q The same apartment building?

18 A Yes.

19 Q Could you describe what he did at that
20 time?

21 A Well, he was staring with his legs crossed
22 and arms crossed. As I am coming down the stairs,
23 I saw him. He asked me for a cigarette. As I gave
24 him a cigarette, I went to turn around to go out
the door, that's when he grabbed me and hit me.

1
2 Q And can you describe to Judge Holt exactly
3 how he hit you?

4 A Okay, he turned me back around, he hit me
5 in my face, okay.

6 Q What happened then, Phyllis?

7 A Okay, that's when he put a knife up
8 against my neck.

9 Q And when he put that knife against your
10 neck, where were you at?

11 A We was still in the hallway.

12 Q Was anybody else around there then?

13 A No, it wasn't.

14 Q What happened then, Phyllis?

15 A Then he backed me back up into his
16 apartment. We went exactly into the front room,
17 and he threw me on the couch.

18 Q And can you describe what happened after
19 the defendant got you into his apartment?

20 A Okay, we went to the front room. That's
21 when he threw me on to the couch. He reached on
22 the side of the couch and got a rope.

23 Q And could you describe that rope to Judge
24 Holt?

A It's like a rope that you tie up boxes

1 with, a cordless rope.

2 Q And what did the defendant do with that
3 rope, Phyllis?

4 A He put it around my neck.

5 Q And can you describe to Judge Holt how he
6 put it around your neck or what he did with that
7 rope around your neck?

8 A He wrapped it twice -- After he put it
9 around my neck, he wrapped it twice, and he still
10 had a hold of the rope.

11 Q After he put the rope around your neck,
12 what happened?

13 A Okay, that's when he told me to take one
14 leg out of my pants.

15 Q And, Phyllis, can you describe the knot
16 that the defendant used to put -- when he put that
17 rope around your neck?

18 A No, I really can't, but all I know he had
19 it around his hand twice, so if he pulled it, it
20 tightened up on my neck.

21 Q So the knot would tighten if he pulled on
22 the rope, right?

23 A Yes.

24 Q And he had the rope in his hand?

1
2 A Yes, he did.

3 Q And, Phyllis, did you take one of your
4 pant legs down as he told you to do?

5 A Yes, I did.

6 Q And after you did that, can you describe
7 to Judge Holt what happened?

8 A Okay, then we got up, he made me lie down
9 on the floor after I took my pants, one leg out of
10 my pants, then he got on top of me.

11 Q And, Phyllis, at anytime during this time,
12 did he ever say anything to you?

13 A No, he didn't.

14 Q Not at this time?

15 A Not at this time.

16 MS. PLACEK: Objection.

17 MR. MURPHY Q What happened next --

18 Excuse me, Judge, I'm sorry.

19 THE COURT: The objection is overruled.

20 MR. MURPHY Q What happened then, Phyllis?

21 A After he did that, okay, that's when he
22 penetrated himself into me.

23 Q When you say he penetrated himself into
24 you, can you very explicitly tell Judge Holt what
he did?

1
2 A Okay, after we was lying down, and he was
3 on top of me, he took his penis out and stuck it
4 into me.

5 MR. LUFRANO: Your Honor, I can't hear.

6 THE COURT: Miss Reporter, will you read back
7 the witness' response to Mr. Lufrano?

(Whereupon question read back)

8 MR. MURPHY Q And what part of his body did he
9 put his penis in?

10 A In my vagina.

11 Q So he put his penis in your vagina, is
12 that right?

13 A Yes, he did.

14 Q And did he put his penis in your vagina
15 one time?

16 A No, he put it in there more than one.

17 Q Approximately how many times did he do it?

18 A He had to do it twice.

19 Q So he took his penis out of your vagina
20 and put it back in a second time?

21 A Yes.

22 Q Can you describe what else happened to
23 Judge Holt?

24 A Okay, then, he told me, "I know what

1 you're doing. If you don't loosen up, I am going
2 to choke you."

3 Q And at the time that he had the rope -- at
4 the time the rope was still around your neck?

5 A Yes, it was.

6 Q And was he still holding the rope?

7 A Yes, he was.

8 Q At anytime while this was going on, did he
9 ever pull on the rope?

10 A He pulled on it once.

11 Q And can you describe what happened when he
12 pulled on the rope?

13 A Then I loosened myself up.

14 Q And when he pulled on the rope, did the
15 rope chock on your neck?

16 A Yes, it did.

17 Q And, Phyllis, at anytime did the defendant
18 say anything else to you?

19 A No, after that, no.

20 Q At anytime did the defendant ever tell you
21 he was going to kill you?

22 MS. PLACEK: Objection. Leading and
23 suggestive.

24 THE COURT: Objection is sustained.

1 MR. MURPHY Q Phyllis, do you remember
2 anything else the defendant said to you?
3

4 MS. PLACEK: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, I do.

7 MR. MURPHY Q What's that?

8 A He told me if I don't loosen myself up, he
9 will kill me.

10 Q Now, Phyllis, after the defendant put his
11 penis in your vagina two different times, what
12 happened then?

13 A After that, he took it out.

14 Q And what happened after he took it out the
15 second time?

16 A Okay, we got up. He let me put my pants
17 on. I asked if he's going to do this, why don't we
18 get something to get high off of, and we can do it
19 right.

20 Q Is this you making this statement?

21 A Yes.

22 Q Why did you -- Did you have sex with him
23 willingly in his apartment?

24 MS. PLACEK: Objection.

THE COURT: What's the basis of your objection?

1
2 MS. PLACEK: First of all, as to the leading
3 and suggestive nature. Secondly, Judge, as to the
4 calling for conclusion or mental state in 1991 for
5 1984.

6 THE COURT: The problem that I'm having,
7 Mr. Murphy, is the limited purpose for which this
8 evidence is to be received if at all, and the
9 explicit details of that 1984 occurrence is really
10 not relevant to anything that's connected with this
11 case except to show the similarities between the
12 two events, and I don't see how that's being done
13 by this question. All it tells me is what happened
14 in 1984. It is not relevant here.

15 MR. MURPHY: Well, Judge, I think what it
16 tends -- what that question would tend to show is
17 that the defendant had sex with a victim against
18 her will.

19 THE COURT: So what.

20 MR. MURPHY: Well, Judge, that's one of the
21 elements that I think one of the similarities
22 between that offense and the offense for which he's
23 on trial.

24 THE COURT: You must distinguish the 1984 case
from every other sexual assault case so as to be

1
2 able to say with a fair degree of certainty that
3 the similarities distinguished between -- the
4 similarities between '84 and '88 distinguished the
5 '88 case from all other sexual assault cases, and
6 sex against the will of the female involved is a
7 norm in almost all sex cases until AIDS is a factor
8 which makes it an assault case, so that's not
9 relevant. It does not distinguish. In other
10 words, Mr. Murphy, the occurrence that took place
11 in '84 from any other occurrence that may have
12 taken place so as to say the person who perpetrated
13 the '84 incident perpetrated the '88 incident.

14 The objection is sustained.

15 MR. MURPHY Q Now, Phyllis, at the time you
16 were brought into that apartment until the time you
17 left, approximately how much time went by, do you
18 remember?

19 A About an hour.

20 Q And, Phyllis, when you were in that
21 apartment, were you in there against your will?

22 MS. PLACEK: Objection.

23 THE COURT: The objection is sustained.

24 MR. MURPHY: Judge, again, I believe one of the
similarities between this offense, the offense

1 which is on trial, and the other witness who will
2 testify in this case, next case, is that each of
3 these witnesses were not just held against their
4 will, but were kidnapped, taken off the street.

5 MS. PLACEK: With all due respect, the
6 Assistant State's Attorney is now speaking, and we
7 would have serious objection to this. In the
8 reports tendered by the State's Attorney, the
9 State's Attorney, themselves, at the time of the
10 incident refused to bring charges --

11 MR. CASSIDY: Objection, Judge.

12 THE COURT: The objection is overruled. It's
13 argument, and she may proceed with her argument.

14 MS. PLACEK: Thank you, your Honor. For the
15 purpose of the record, Judge, the State's Attorney
16 at the time refused to charge --

17 MR. CASSIDY: Objection, Judge.

18 THE COURT: Objection has been overruled.

19 MS. PLACEK: Refused to enter charges, and this
20 was, in fact, the subject of the Motion in Limine,
21 which was the battery SOL. The suggestion that now
22 these State's Attorneys so far removed, Judge, and,
23 again, I take it that counsels are, in fact,
24 relying specifically, Judge, on People versus

1 Philfums (Phonetic), to put up a young lady who was
2 25 at the time, ignoring Philfums as cited on Page
3 11, the similarities requirement, and then to try
4 to suggest that it was in any way a criminal sexual
5 assault, at that time a rape, when their own
6 office, after a hospital visit, after speaking to
7 the witnesses, and also after a Felony Review
8 Assistant was called to, in fact, refuse any felony
9 charges whatsoever. I would suggest, Judge, is
10 quite frankly not only a breach of the rules of
11 evidence, Judge, but it borders almost on a breach
12 of ethics.

13 MR. CASSIDY: Objection, Judge. Motion to
14 Strike. It's all argument. It's all hearsay.

15 THE COURT: It's nothing but argument.

16 MR. CASSIDY: It's hearsay, too.

17 THE COURT: It's not evidence, so it can't be
18 hearsay. Hearsay talks about evidence. That's
19 just her conclusions of what -- based on nothing.

20 MR. CASSIDY: Judge, I am surprised you
21 entertained the argument.

22 THE COURT: She has a right to make any
23 argument that she chooses. The fact that it's
24 irrelevant doesn't stop people from making

1 arguments. I wish I could stop lawyers from making
2 irrelevant arguments. That would be fine if I
3 could. I, unfortunately, don't know how to do
4 that. In any event, the problem here is not the
5 relevancy of that argument. The problem here is
6 whether or not you're within the limited scope that
7 you can raise this evidence in. I'm not concerned
8 that a Felony Review Assistant or any other
9 assistant rejected charging the defendant in 1984.
10 That's not relevant to me at all. The question of
11 relevancy here is whether or not, whatever you
12 show, charged or uncharged, tried or untried,
13 convicted or not convicted, whether or not you're
14 going to show a set of facts that's so clearly
15 distinguishable from any other normal garden
16 variety if you choose, if that's an appropriate way
17 to phrase it, aggravated criminal assault, so as to
18 say this is distinguishable and imprints this
19 conduct on this defendant, and all you're telling
20 me so far is that this lady had a horrible
21 experience with this defendant, which is precisely
22 what the rules of evidence prohibits you from doing
23 as opposed to allowing you to do. That's the
24 precise bar and prohibitions against this kind of

1 evidence, that you cannot show that this defendant
2 has a propensity to commit heinous acts against
3 another person. That's not the purpose. The
4 purpose is to show is what he did was so unique to
5 him that one can say because of these similarities,
6 there's a reasonable degree that the perpetrator is
7 one in the same, and that has not been shown
8 through this witness in my opinion up to now.
9 There's nothing similar about the incidents except,
10 perhaps, the use of a ligature. I hope that I am
11 making myself clear to you, but I am listening and
12 wanting to hear how it is unique. If it were not
13 so remote, if it were not so remote, it may be
14 relevant for other purposes such as identity or
15 common design or scheme, but when you're talking
16 about something that's four years, four years
17 remote, the cases are very clear that you can't use
18 it except in a very limited sort of way.

19 MR. MURPHY: Judge, obviously, your Honor has
20 made your opinion clear --

21 THE COURT: I haven't reached an opinion. I
22 have reached an opinion about what I've heard.

23 MR. MURPHY: Your Honor, we intend to argue
24 once the evidence is before the Court whether or

1 not the Court should consider the evidence of these
2 other crimes.

3 THE COURT: Well, I understand that, Mr.
4 Murphy. The problem that I have, as I tried to
5 articulate both yesterday and at other prior
6 hearings where we discussed this, if there were a
7 jury sitting before in this case, a jury sitting,
8 hearing this evidence to determine whether or not
9 the jury should hear it, at this point I would
10 decline to present this evidence to the jury.
11 Therefore, there's no reason unless we are going to
12 get to something that brings it closer to the stage
13 where it would have to be for the jury to hear it,
14 there's no reason for me to continue to hear it
15 either.

16 MR. MURPHY: Judge, first of all, I would think
17 that the Court would agree that once situation
18 can't be judged alone. We have another victim who
19 we intend to call in this case, and I don't believe
20 any conclusions can be drawn about the link between
21 the cases until the Court has heard all the
22 evidence, and I understand what the Court is
23 indicating, but frank, Judge, I believe it's
24 premature. We are not in a position where we

1 anticipate arguing in the middle of direct.

2
3 THE COURT: Well, you have an obligation,
4 Mr. Murphy rather than to put this evidence before
5 a fact-finder including a judge to, as rapidly as
6 you can, get to the issue of how it becomes
7 admissible. This is to by all standards and by
8 all persons who have reviewed this kind of evidence
9 is highly prejudicial, it's inflammatory, and it is
10 highly prejudicial to a defendant when a judge is
11 hearing it. It is still highly prejudicial, but
12 the fact that it is prejudicial does not mean that
13 it is inadmissible. It means, however, that the
14 Court ought to be very, very careful including the
15 Court sitting alone without a jury in hearing this
16 kind of evidence because my mind is not a slate
17 either, and while I will do the best that I can,
18 nonetheless, unless there's something very clear
19 about this evidence that makes it obvious that it
20 can be tied up in such a way as to make it
21 admissible, then I should stop hearing it, and I am
22 certainly saying to you that based upon what I
23 heard so far, the only linkage, the only possible
24 linkage is a use of ligature. That's the only
thing that's remotely similar in these two

1 occurrences that I am hearing, and I am saying to
2 you --

3 MR. MURPHY: Judge, I have an argument
4 prepared. I didn't think that we were going to
5 argue this until the Court heard the evidence.

6 THE COURT: Well, I'm saying to you,
7 Mr. Murphy, you better tell me now as Miss Placek
8 suggested yesterday by way of an offer of proof as
9 what your evidence is going to show because I don't
10 want to hear this evidence only to find it's not
11 usable for any purpose, and then trust that I do
12 make the herculean task of exhuming it all from my
13 mind and from the recesses of my consciousness and
14 rule on this case without any affect of that
15 evidence on me at all. That's not a fair position
16 to put a judge in unless it is unavoidable, and in
17 this instance, it is now apparent to me it is
18 unavoidable. I don't have to be in that position.

19 MR. MURPHY: Judge, even if we made an offer of
20 proof, we would still make the same evidence --

21 THE COURT: That's quite a bit different also
22 than from hearing it from the witness who you will
23 call. I become involved in the witnesses just as a
24 jury would. You're not doing -- Mr. Murphy, tell

1 me what your evidence is going to show?

2 Miss Williams, would you please step
3 down and step into the other room for a moment?

4 MR. LUFRANO: Your Honor, we would ask they
5 articulate the similarities. That was the subject
6 of our Motion in Limine, which was brief.

7 THE COURT: Mr. Murphy, tell me, what you
8 consider to be the aspects of the testimony that
9 I've heard that imprint this defendant's signature
10 on that 1984 crime or the 1988 crime?

11 MR. MURPHY: Judge, first of all, your Honor,
12 it's our position that the evidence in this
13 particular case involving Phyllis Williams and also
14 the evidence involving another victim who has not
15 testified before your Honor should be admissible as
16 evidence of other crimes, not only to show modus
17 operati, but also to show intent, lack of consent
18 and identification.

19 THE COURT: Mr. Murphy, I'm going to deny that
20 latter part up front. I thought I did that a week
21 or so ago, made clear that I will not receive this
22 evidence for the purpose of identity, intent, lack
23 of consent, or anything other than modus Operati,
24 it's too remote, it's too remote or me to receive

1
2 it for that purpose. I will receive it for modus
3 operati.

4 MR. MURPHY: Judge, you did make an indication
5 what your feelings were, but I didn't think any
6 party was barred from showing how it was relevant
7 for other purpose, and, your Honor, I found one
8 case, which I think is somewhat relevant, People
9 versus Petervilt (Phonetic), which is at 139 IL
10 App. 3, 868. I'm tendering a copy to the defense
and a copy to the Court.

11 MR. LUFRANO: This could have been done without
12 the testimony, without the prejudicial impact.

13 MR. MURPHY: Judge, I thought arguments would
14 be made after the Court heard the testimony.

15 THE COURT: Tell me how you're going to get a
16 1984 case or occurrence to be relevant to identity
17 or intent of the defendant?

18 MR. MURPHY: Judge, in the Petervilt case,
19 there was an offense in which was strikingly
20 similar to the offense which the defendant was on
21 trial, and that particular case the prosecution was
22 allowed to introduce evidence of that offense not
23 only to show modus operati, but also to show intent
24 and lack of consent of the victim. In this

1 particular case, Judge, the crimes were
2 approximately three months apart from one another,
3 but I believe it was three and a half months, your
4 Honor --

5 THE COURT: You consider that to be a
6 significant difference?

7 MR. MURPHY: Compared to this case, Judge?

8 THE COURT: Yes.

9 MR. MURPHY: Judge, I do not, and I tell you
10 why. Your Honor, I believe that the evidence in
11 this particular case would show that Phyllis
12 Williams was assaulted on June 30, 1984. The
13 evidence will also show that in early September,
14 1984 another victim, Stephanie Smith was assaulted,
15 approximately three months later. The evidence
16 will show the defendant was in custody from
17 September 3, 1984 until he was released from the
18 Illinois Department of Corrections on May -- on
19 April 25, 1988, that's approximately three months
20 after the release, he committed the offense for
21 which he's on trial now. And, Judge, our position
22 is simply this: Your Honor has looked at the dates
23 of the offenses and made a preliminary ruling that
24 because these occurred in 1984, therefore, they are

1 too remote from the offense for which the defendant
2 is on trial now to even be considered as evidence
3 of intent, evidence of identification, evidence of
4 lack of consent, but, your Honor, I don't believe
5 it is fair to hold the time against the State when
6 the defendant was in custody. He was not in a
7 position to assault any female victims because he
8 was in jail, he was in jail, Judge.

9 MS. PLACEK: Excuse me, Judge. With all due
10 respect, as part of this trial, there would be
11 sincere objection at this time by the parties since
12 the defendant hasn't testified, since, in fact --

13 THE COURT: Miss Placek, you knew that this
14 argument was going to emerge before your fact-
15 finder. If you did not want the fact-finder to
16 know about the defendant's prior conviction, his
17 prior incarceration, the case should be tried
18 before a jury. I have a right to know what's
19 relevant to make a decision in this case, and it's
20 quite common, quite normal, quite natural that a
21 trial court judge will hear evidence which a jury
22 would not be permitted to know. I've known that
23 this defendant had a prior conviction for many
24 months now because I can read this court file that

1 I handle everyday and every time the case is on the
2 call. Those are the considerations that go into
3 the determination of trying the case before a court
4 or jury so that no harm, no harm at all is being
5 done to your defendant by this recitation that he
6 was in custody during that period of time.

7 MS. PLACEK: With the assurance of the court,
8 Judge, we would still make our objection for the
9 record, but offer no argument.

10 THE COURT: Proceed.

11 MR. MURPHY: Judge, if you consider, if you
12 exclude the time he's been in custody, he couldn't
13 commit that offense, he couldn't because his
14 freedom was restricted. If you exclude that time,
15 Judge, there's approximately a three-month period
16 between each offense, which I submit, Judge, is
17 appropriate for you to consider for purposes of
18 intent, for purposes of identification, and or
19 purposes of lack of consent.

20 Now, with respect, Judge, of evidence
21 of modus operati, your Honor has asked us to
22 indicate now what our position is, and what we
23 think the points of similarities are, and we will,
24 Judge. Your Honor, we do not intend to offer this

1 evidence to show that the defendant had a
2 propensity to commit crimes. We intend to offer it
3 for purposes of describing modus operati, and, your
4 Honor, I tendered a number of cases to your Honor,
5 and another case, and your Honor made comments in
6 this trial about those cases, which we tendered,
7 and those cases, Judge, are inapplicable in this
8 case for very important reasons. Those cases
9 involved an armed robbery, and those particular
10 cases, evidence of other crime was admitted --
11 evidence of their crimes was admitted primarily for
12 two reasons, which was common in all those cases.
13 One was time and place proximity, and the other one
14 was design, and, again, Judge, those cases are
15 slightly different than the case you have before
16 your Honor, so to apply those cases to this case, I
17 think is inappropriate. There's no way the State
18 is saying to your Honor in this particular case
19 that the two prior offenses that the defendant
20 committed are being offered for time and place
21 proximity. It does not apply. We admit that,
22 Judge. However, for purpose of modus operati, they
23 should be considered.

24 In Illinois, the standard is whether

1 or not -- and I am quoting from the Stanley Clausen
2 case, Judge, which is a case that was decided in
3 this building and can be found at 182 IL App. 268.
4 The standard for modus operati only is whether
5 there's been a showing, strong and persuasive
6 showing of crime charged and separate offenses
7 which established substantial link of the cases.
8 The case states some distinguished features not
9 common to most offenses of that type must be
10 present to establish the link.

11 Your Honor, from the reading I have
12 done in regard to this area, the common practice of
13 the courts in the State of Illinois is to look at
14 the points of similarity. This is not a test in
15 which is a strict test. I believe the test is
16 unique from case to case. The point should be
17 similar and distinctive, and I think it's
18 interesting to note, Judge, if you read the case
19 law in the State of Illinois, the number of points
20 of similarity, although may be helpful, are not
21 conclusive. In fact, if you have one unique point,
22 Judge, or two unique points, I think that's
23 sufficient if they are very unique points. An
24 example of that is People versus Coversich case,

1 which can be found at 10 IL App. 3rd, 797.
2 Although that was a burglary, the court admitted
3 evidence of other crimes only where there's two
4 points of similarity: the manner of entry, and the
5 use of gloves.

6 Judge, it's our position that we are
7 not required to show that in Phyllis Williams'
8 assault, and the assault of Stephanie Smith, which
9 I believe you will hear testimony regarding her
10 case this afternoon, that they were identical, and
11 the characterization of these crimes, fingerprint
12 is inaccurate.

13 I tender two cases, Judge, People
14 versus Williams, People versus Philfums, which can
15 be found at 95 IL App. 3rd, 801, and People versus
16 Philfums, the docket number is 64506, and I believe
17 these two cases demonstrate, Judge, that the
18 standard that's applied by the court has changed
19 over the years, and, in fact, the strict standard
20 that the State was held to then is not the strict
21 standard that we are held to today.

22 Your Honor, it's our position that if
23 you look at the evidence in this case, you look at
24 the evidence in Phyllis Williams' case, and you

1 look at the evidence that would be elicited through
2 Stephanie Smith, you will find a number of
3 similarities. Your Honor, perhaps the most unique
4 distinction you will hear, and it's our position
5 that it is very unique is the ligature. Your Honor
6 heard in this particular case testimony that a
7 ligature was placed around the neck -- two
8 ligatures were around the neck of the victim, a
9 rope, a shoestring.

10 MR. LUFRANO: Objection. It wasn't a rope.

11 THE COURT: I heard the evidence.

12 MR. MURPHY: A shoestring. You heard Phyllis
13 Williams testify, and she testified that a rope was
14 placed around her neck. The evidence will also
15 show that Stephanie Smith will testify that she was
16 choked during the act -- during the time that she
17 was victimized by the defendant. Your Honor, it's
18 our position that that factor alone is unique
19 enough for the Court to admit other evidence of
20 other crimes.

21 But, your Honor, there are other
22 similarities, and the Court does consider some of
23 these other similarities even though they may not
24 be as unique as the ligature around the neck or